

Inquiry into Australia's Urban Water Sector  
Productivity Commission  
Locked Bag 2, Collins Street East,  
Melbourne Vic 8003

**Re: Public inquiry into Australia's Urban Water Sector**

Dear Sir/Madam,

The Tenants Union of NSW (TU) is the peak body representing tenants in New South Wales (approximately 24% of the state's population at last Census), and a specialist Legal Centre with expertise in residential tenancy law. We are also the resourcing body for a network of 24 Tenants Advice and Advocacy Services (TAASs) with statewide coverage, which is funded by Fair Trading NSW. We are well placed to identify issues and trends in tenant and landlord relations across New South Wales. Relevantly, TAASs frequently respond to inquiries from tenants about their rights and obligations around water charges.

We welcome the opportunity to comment on the Productivity Commission's draft report on Australia's Urban Water Sector. Our interest in the draft report is restricted to recommendations 7.1 and 7.2, as they relate to the charging of water use by tenants, and the relationship between water charges and rents.

DRAFT RECOMMENDATION 7.1

***Metering technology should be introduced in all new single and multi-unit dwellings. The case for retro-fitting existing single and multi-unit dwellings with separate metering technology should be assessed by utilities.***

As is noted in the draft report, landlords in New South Wales can require tenants to pay for their water consumption, provided the amount of water consumed can be calculated directly, either by separate metering, or by delivery of water by vehicle to premises not connected to a water supply service. This condition has applied in New South Wales for more than twenty years, and is provided for by law (in the *Residential Tenancies Act 2010* and previously, under the *Residential Tenancies Act 1987*). We understand similar provisions also occur in other Australian jurisdictions.

There are two general points to make in relation to this condition. First, as is noted in the Commission's draft report, landlords who are unable to pass water consumption costs on to tenants directly (through separate metering) tend to pass them on indirectly (through higher rents). Second, where disputes about water costs arise, it is predominantly due to landlords who have not factored these costs into rents seeking to recover water costs (as an ad-hoc additional charge) where premises are not separately metered. With this in mind, the idea that metering technology should be required in all dwellings is appealing, as it would remove a significant basis for disputes between landlords and tenants over water consumption charges. Metering devices can be easily obtained, and landlords of existing

dwellings should be encouraged to source them for retrofitting. But this is a policy objective that residential tenancy law in New South Wales and other jurisdictions is already designed to achieve – by allowing landlords to pass water consumption costs onto tenants directly if premises are separately metered, landlords are given a clear incentive to retrofit water metering devices.

Any attempt to encourage landlords to retrofit premises with such devices *en masse* should be approached with caution, for reasons of affordability for tenants. While the costs of capital improvements (as well as any potential increase in market value this may promote) will generally mean increased rents, savings to landlords do not result in rent reductions.

DRAFT RECOMMENDATION 7.2

***Utilities should charge tenants directly for all water charges, both fixed and volumetric, where water is separately metered. Where this does not already occur, State and Territory Governments might need to put in place transitional arrangements to ensure that savings to landlords are passed through to tenants.***

Allowing suppliers to charge tenants directly for water services (including fixed charges), rather than via the landlord, should be more carefully considered. Residential tenancy law includes provisions concerning payment for water consumption, and ensures that landlords can easily recover water consumption charges from tenants.

It is one thing to bill tenants directly for water consumption, but another thing entirely to charge them for availability and supply of water. Residential tenancies law in NSW requires that premises for rent should be provided in a state fit for habitation. Water availability goes to habitability, and this includes the provision of water itself – not just the infrastructure to support its delivery throughout the premises. Payment for the connection and supply of water should be regarded as an essential component of this provision, as without it, water cannot be easily obtained. The same is true of energy services such as gas and electricity, for which consumption charges are borne by tenants. Contrary to suggestions made in the Commission’s draft report, water and energy services are not analogous to telecommunications services. Advances in methods of supply places fixed telephone and internet connections into an entirely different category.

Transferring water supply costs from landlords to tenants will have adverse implications for rental housing affordability. The Commission’s report suggests that affordability concerns would be mitigated through landlords passing savings to tenants via reduced rents. In our experience, savings to landlords are rarely, if ever, passed on to tenants through rent reductions. Rents will be determined by what the market will bear. They do not decrease during periods of low supply and high demand, regardless of any reduction in landlords’ costs. In making this recommendation, the Commission suggests transitional arrangements may be required to ensure that savings to landlords are passed on to tenants. Such transitional arrangements are indeed required, and should be well considered, and elaborated upon, as a key component of this recommendation.